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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,017	01/24/2007	Adrian Dalglish	7383/88167	9262
42798	7590	07/06/2011		
FITCH, EVEN, TABIN & FLANNERY			EXAMINER	
P. O. BOX 18415			HELVEY, PETER N.	
WASHINGTON, DC 20036				
		ART UNIT	PAPER NUMBER	
		3782		
		MAIL DATE	DELIVERY MODE	
		07/06/2011	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,017

Applicant(s)

DALGLEISH ET AL.

Examiner

PETER HELVEY

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 15-17 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 15-17, 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13, 15-17, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by *Bose* (US 5007233).

Bose discloses an as-manufactured multi-wall sack that comprises an inner pouch and an outer bag, with the sack having a top end that (a) is open in the as-manufactured form of the sack (as manufactured form before closing) so that the sack can be filled with product via the open end and (b) is formed so that it can be closed to form a top block end (sack taught by *Bose* clearly "can be closed" by a top end block), and wherein, in the as-manufactured form of the sack, the sack comprises pressure adhesive (green tack 18 resists pressure of filled bag from falling as described by specification. Where applicant has failed to further define that the adhesive is pressure-activated, as was done with the heat-activated adhesive, the examiner considers an adhesive that resists pressure to meet the broadest reasonable scope of "pressure adhesive") that connects together the inner pouch and the outer bag at the open top end of the sack (Fig. 4).

The examiner further reminds applicant that the presence of process limitations on product claims, wherein the product does not otherwise patentably distinguish over the prior art, cannot impart patentability to the product. In re Stephens 145 USPQ 656 (CCPA 1965). The recited folding steps have been considered however are not considered to patentably define over that taught by *Bose* because the bag of *Bose* could clearly be folded in the manner claimed by applicant.

Regarding the limitation, wherein the amount and/or the type of adhesive is selected so that the adhesion of the inner pouch to the outer bag is greater on one of a front or a rear side of the sack than on the opposite side of the sack so that, as part of a sequence of steps to close the outer bag after a step of heat sealing the inner pouch closed, the front and rear sides of the outer bag can be folded outwardly with the sealed inner pouch being selectively detached from one of the sides of the outer bag and being retained by the other side, the examiner notes language is sufficiently broad to allow the following interpretation:

The examiner has interpreted the amount of adhesive (18) taught by *Bose* to more strongly adhere the inner bag to the outer bag on the sides with the adhesive than the opposing sides without the adhesive, such as the side folds formed when the bag is closed, which have an amount of no adhesive selected. This clearly results a device where "as part of a sequence of steps to close the outer bag after a step of heat sealing the inner pouch closed, the front and rear

sides of the outer bag can be folded outwardly with the sealed inner pouch being selectively detached from one of the sides of the outer bag and being retained by the other side" as claimed.

Bose further discloses the sack comprises heat-activated adhesive (20) on sections of the outer bag that adhere to other sections of the outer bag as part of the sequence of steps to close the outer bag; the positions of the sections of the outer bag that carry heat-activated adhesive are selected so that the sequence of steps to close the outer bag where possible positions the heat-activated adhesive sections so that the sections do not overlie the inner pouch (see note below regarding interpretation of "where possible" limitations).

Bose further discloses the sack being filled and closed (abstract). The examiner further considers the releasable adhesive (20 used to close the outer bag taught by *Bose* to meet the scope of an "easy open" feature as claimed.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bose* as applied to claim 21 above, and further in view of *Strand* (US 5350239).

Bose discloses all limitations of the claims as detailed above except does not expressly disclose the vent seal with tortuous path as claimed by applicant.

However, *Strand* teaches providing a vent seal with a tortuous path in a liner bag (Fig. 6; col. 5, ll. 35 - col. 6, ll. 25).

At the time of the invention, it would have been obvious to a person having ordinary skill in the art to attach add the vent seal taught by *Strand* to the bag assembly taught by *Bose*, in order to prevent excess air accumulation during periods of prolonged storage (col. 2, ll. 20-40).

5. Claims 24 and 25 rejected under 35 U.S.C. 103(a) as being unpatentable over *Bose* as applied to claim 21 above, and further in view of *Hoevel* (US 5836444).

Bose discloses all limitations of the claims as detailed above except does not expressly disclose the product ID coding as claimed by applicant.

However, *Hoevel* teaches providing product ID coding on packaging (col. 4, ll. 10-20).

At the time of the invention, it would have been obvious to a person having ordinary skill in the art to provide product coding as taught by *Hoevel* to the bag assembly taught by *Bose*, in order to allow identification in many countries (col. 4, ll. 10-20).

Response to Arguments

6. Applicant's arguments filed 4/18/2011 have been fully considered but they are not persuasive.

The examiner has considered applicant's arguments that Bose does not anticipate or render obvious the claimed invention however the arguments are not persuasive.

The examiner acknowledges that the Bose reference does not demonstrate the applicant's outwardly folded bag wall arrangement, however such is not actually required by applicant's claim language in final form.

Applicant claims a bag that with sides of the outer bag that **"can each be folded outwardly in opposite..."**, not a bag where the side walls **actually are** folded outwardly. There is in enormity of difference between actually claiming a structural arrangement and claiming something that **"can"** form the structural arrangement.

The bag of Bose **can be** folded in the claimed outward arrangement manually by a user if by no other means. Applicant's claim language does not positively require the actual closed form of the bag as explained above, and therefor the use of the Bose reference remains proper and the rejection is maintained.

It should be appreciated that the applicant's functional language in the claims does not serve to impart patentability. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Apparatus claims cover what a device is, not what a device does. A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior apparatus teaches all the structural limitations of the claims. In re Schreiber, 128 F.3d 1473, 1477-

78,44USPQ2d, 1429, 1431-.2 (Fed. Cir. 1997); Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469 ,15 USPQ2d 1525, 1528 (Fed. Cir. 1990); Ex parte Masham, 2USPQ 2d 1647 (Bd. Pat. App. & Inter. 1987).

For the reasons stated above, as well as those set forth in the rejections above, applicant's arguments filed 4/18/2011 are not persuasive and the rejections are maintained.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER HELVEY whose telephone number is (571)270-1423. The examiner can normally be reached on M-Th 8:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. H./
Examiner, Art Unit 3782

July 2, 2011

/NATHAN J NEWHOUSE/
Supervisory Patent Examiner, Art Unit 3782